

Remarks

Responsive to the Office Action of August 9, 2001, the applicants have amended claims 1, 5, 9, 11, 12, 18, 22, 26, 29, 31, and 35. New claims 38-40 have been added. In addition, detailed arguments in support of patentability of the claims are presented and re-examination is respectfully requested.

Claim Objections

Claims 5, 11, 12, 22, and 29 were objected to because of the following informality: The claims include the limitation "said deck at least three sides". The Examiner suggested this should be changed to "said at least three sides". In accordance with the Examiner's suggestion, the applicants have amended claims 5, 11, 12, 22, and 29 to overcome the Examiner's objections.

35 U.S.C. § 102 Rejections

Claims 31, 34, 35, and 36 were rejected under 35 U.S.C. § 102(b) as being anticipated by Rogers, et al. (U.S. Patent No. 3,369,350).

The Examiner asserted that Rogers discloses a mower head including a deck 16 having at least four sides, a cutting blade 72, a guard 30, 32, a hinge, and a holding member or linkage assembly 38. The Examiner further asserted that the hinge and guard extended between two sides at an obtuse angle. With regard to claim 34, the Examiner asserted that Rogers discloses a guard with a first wall which has a straight edge 26. In regards to claim 36, the Examiner stated that Rogers discloses a linkage assembly with a first flange 40 and a second flange 44.

Independent claims 31 and 35 have been amended to recite that a flap depends from the guard and is movable with respect to the guard. Also, the flap is

oriented in a plane spaced from the plane of the guard. The flap is resilient and bends with respect to the guard member. As acknowledged by the Examiner regarding claim 1, Rogers, et al. does not disclose or suggest the use of a guard flap. In Rogers, the guard members 30, 32, 34 can move from a horizontal position to a vertical position beneath the plane of the deck. In the latter position, they function like the flaps of the present invention. The Rogers guards 30, 32, 34 do not have or require a separate flap to extend from the guards. Moreover, the flap would not be able to depend at right angles from the guard since the guard, in its vertical position, extends to the ground surface. The flap would then be positioned underneath the deck and not serve any function.

Accordingly, independent claim 31 and claim 34 dependent therefrom and independent claim 35 and claim 36 dependent therefrom are patentably distinct over Rogers, et al. and are considered to be in condition for allowance.

35 U.S.C. § 103(a) Rejections

Claims 1, 2, 3, 5-15, 18-23, 26-33, and 35-37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rogers, et al. in view of Thagard, et al. (U.S. Patent No. 5,657,620). The Examiner asserted that Rogers discloses a deck 16 having at least four sides, at least one side wall 20, 22, 50, at least one cutting blade 72, an actuating member 38, and a guard 30, 32. The Examiner acknowledged that Rogers, et al. failed to disclose a guard with a depending flap or an actuating member comprising a hydraulic cylinder and piston.

The Examiner asserted that Thagard, et al. discloses a mower with a pivoting guard 160 on one side. It was also asserted that Thagard uses a hydraulic cylinder and piston 382 to lift the guard. It was further

asserted that Thagard provides a folding guard 360 with a flap 364 which allows the cutting blade to be exposed enough to allow cutting operations. The Examiner concluded that it would have been obvious to one of ordinary skill to add a hydraulic cylinder and piston and a folding guard with a flap to the Rogers, et al. device.

The Examiner acknowledged that Rogers does not disclose a hydraulic cylinder and piston. Rather, Rogers, et al. device uses a manually operated linkage assembly which comprises link members 38, 42, 44 with holes which have pins extending therethrough to lock the guard in either a fully extended, partially extended, or fully retracted position. This manual arrangement would not require a separate actuator.

While Thagard appears to disclose a folding guard, it does not disclose a flap extending therefrom. A drape or wall of chains 364 extends downwardly from the folding guard. However, Thagard does not have a guard flap as recited in claims 1, 9, 18, 26, and 35. That is, Thagard discloses a wall of chains 364 which do not act as a flap or as a flat, thin hanging piece extending from a guard. More importantly, as previously discussed, it is not obvious how a flap would extend from the guard members 30, 32 in the Rogers, et al. device and function when the guards are in the vertical orientation. In addition, replacing the downwardly pivoting guard 30, 32, 34 of Rogers, et al. with the upwardly pivoting guard 360 of Thagard would not have been obvious since the two guards function in opposite ways. It also would not have been obvious to add Thagard's wall of chains 364 to the free ends of Rogers guards 30, 32, 34 since they would be disposed beneath the Rogers deck 16 and interfere with the Rogers cutting blade 72. Accordingly, independent claims 1, 9, 18, 26, 31, and 35 and claims 2-3, 5-8, 10-15, 19-

23, 27-30, 32, 33, 36-40 dependent therefrom, are considered to be patentably distinct over the applied combination of Rogers, et al. and Thagard, as well as the remaining cited art, and are in condition for allowance.

Claims 1, 3, 4, 6, 9, 11, 13, 14, 16, 17, 18, 20, 21, 24-28, 30, and 31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gullett (U.S. Patent No. 4,378,668) in view of Stevens (U.S. Patent No. 4,282,704). The Examiner asserted that Gullett discloses a mower head including a deck 14 with four sides, sidewalls, a guard 24, and an actuating member 23, 27. The Examiner acknowledged that Gullett discloses a rigid wall member attached to the guard instead of a flap. The Examiner further noted that Stevens makes the downward wall a flap which folds inward in a raised position to allow the cutting blades to be further exposed. The Examiner asserted that it would have been obvious to one of ordinary skill in the art to make the downwardly extending wall of Gullett a flap as shown in Stevens. However, the extension 41 of Stevens protrudes forward, not downward, as shown in Figs. 2 and 3. The extension serves as a guard which pivots from horizontal to vertical positions. Depending wall 17 of Stevens, which does not appear to move, functions as a flap. But wall 17 does not move with guard member 41. It is part of housing main portion 15. Thus, the guard arrangement of Stevens does not read on the guard and flap arrangement of claims 1, 9, 18, 26, and 31 or their dependent claims.

Moreover, the proposed combination of Gullett and Stevens still would not render unpatentable the pending claims. More particularly, substituting the forwardly extending wall 41 of Stevens in place of the downwardly extending wall member of Gullett would leave the Gullett mower with no flap. Also, replacing the Gullett downwardly extending wall with depending wall 17

of Stevens would leave Gullett unchanged. Thus, neither of these actions would result in a mower head with a flap depending from a guard wherein the flap is a) movable in relation to the guard and b) is oriented in a plane spaced from the plane of the guard.

Independent claims 1, 9, 18, 26, and 31 each further call for an actuating member mounted on the deck of the mower head. Neither Stevens nor Gullett disclose or suggest an actuating member mounted on the deck. For example, in Gullett the actuating member is comprised of cable 23 and lever 27 neither of which are mounted on the deck.

Accordingly, independent claims 1, 9, 18, 26, 31, and claims 3, 4, 6, 11, 13, 14, 16, 17, 20, 21, 24, 25, 27, 28, 30, and 38-40 dependent therefrom, are considered to be patentably distinct from Gullett and Stevens, as well as other cited art and are in condition for allowance.

New dependent claims 38-40 have been added to recite that the flap of the present invention is a resilient and one-piece flap. Referring to Figures 3B, 4B, 5B, and 6 of the specification, as well as page 9 of the specification, lines 7-10, it is there stated that "[h]owever, side wall 64 comprises a flap which is flexible and moves out of the way when cutting is performed. The flap can be made from rubber cloth, or any other flexible material." Therefore, the flap can be resilient and of one piece.

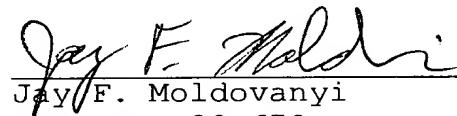
None of the prior art cited by the Examiner discloses or suggests use of a resilient one-piece flap with a movable guard. Thus, claims 38-40 are also believed to be patentably distinct over the cited prior art, and are in condition for allowance.

CONCLUSION

All formal and informal matters have been addressed, it is respectfully submitted that this application is in condition for allowance. It is believed that the proposed claim changes place the application in condition for allowance. Accordingly, entry of the amendment is respectfully requested. Early notice to that effect is earnestly solicited.

Respectfully submitted,

FAY, SHARPE, FAGAN,
MINNICH & MCKEE, LLP



Jay F. Moldovanyi
Jay F. Moldovanyi
Reg. No. 29,678
James E. Scarbrough
Reg. No. 47,056
1100 Superior Avenue
Seventh Floor
Cleveland, Ohio 44114-2518
(216) 861-5582

N:\CRT\20017\BJW0520A.WPD

MARKED-UP VERSION OF THE AMENDED CLAIMS

November 9, 2001

IN THE CLAIMS:

Please amend claims 1, 5, 9, 11, 12, 18, 22, 26, 29, 31 and 35 as follows:

1. (Amended) A mower head comprising:

a deck having at least three sides and at least one side wall depending from said deck;
at least one cutting blade rotatably mounted to
5 said deck on an axis extending through said deck, said
deck being disposed above and generally parallel to said
blade; and

a guard assembly comprising:

an actuating member mounted on said deck,
10 a guard attached to said actuating member
and pivotally attached to said deck along two of said at
least three sides of said deck, and

15 a flap [which depends] depending from said
guard and movable in relation to said guard, said flap
being oriented in a plane spaced from a plane of said
guard.

5. (Twice Amended) The mower head of claim 4
wherein two of said deck at least three sides are normal
to each other and a third of said [deck] at least three
sides is positioned at an obtuse angle in relation to said
5 two of said deck at least three sides.

9. (Amended) A mower head comprising:

a deck having at least three sides;
at least one cutting blade rotatably mounted to
said deck on an axis extending through said deck, said
5 deck being disposed above and generally parallel to said

blade; and

a guard assembly comprising:

an actuating member mounted on said deck,
a hinge extending between two of said at
10 least three sides of said deck,

a guard attached to said actuating member
and pivotally attached to said deck via said hinge, and

15 a flap which depends from said guard and is
movable in relation to said guard, said flap being
oriented in a plane spaced from a plane of said guard.

11. (Amended) The mower head of claim 9 wherein one
of said [deck] at least three sides comprises a plurality
of angled sections.

12. (Amended) The mower head of claim 11 wherein
said guard includes a first wall which comprises a
plurality of angled sections which matingly interconnect
with said angled sections of said one of [deck] at least
5 three sides and a second wall which comprises a plurality
of angled sections.

18. (Twice Amended) A mower head comprising:

a deck comprising:

at least four sides, and

three side walls, one depending from each
5 of three of said at least four sides, wherein two of said
three side walls are rigid;

at least one cutting blade rotatably mounted to
said deck on an axis extending through said deck, said
deck being disposed above and generally parallel to said
blade; and

a guard assembly comprising:

an actuating member mounted on said deck,
a hinge extending between two of said at

least four sides of said deck,
a guard attached to said actuating member
and pivotally attached to said deck via said hinge, and
a flap which depends from said guard and is
5 movable in relation to said guard, said flap being
oriented in a plane spaced apart from a plane of said
guard.

22. (Amended) The mower head of claim 21 wherein
said guard includes a first wall which comprises a
plurality of angled sections which matingly interconnect
with said angled sections of one of [deck] said at least
5 four sides and a second wall which comprises a plurality
of angled sections.

26. (Amended) A mower head comprising:
a deck having at least three sides;
at least one cutting blade rotatably mounted to
said deck on an axis extending through said deck, said
5 deck being disposed above and generally parallel to said
blade; and
a guard assembly comprising:
an actuating member mounted on said deck;
a guard pivotally attached to said deck at
10 an obtuse angle in relation to sides of said deck which
are adjacent opposed ends of said guard, said guard
including a first wall which comprises an approximately
straight edge and a second wall which comprises a
plurality of angled sections, and
15 a [wall] flap which depends from said guard
and is oriented in a plane spaced apart from the plane of
said guard.

29. (Amended) The mower head of claim 26 wherein two
of said deck at least three sides are normal to each other

and a third of said deck at least three sides is positioned at an obtuse angle in relation to said two of 5 said [deck] at least three sides.

31. (Amended) A mower head comprising:
a deck having at least three sides;
at least one cutting blade rotatably mounted to
said deck on an axis extending through said deck, said
5 deck being disposed above and generally parallel to said
blade;
a guard assembly comprising:
a hinge extending between two of said at
least three sides of said deck,
10 a guard pivotally attached to said deck via
said hinge; [and,]
a holding member for holding said guard in
one rotational position in relation to said deck[.]; and
a flap extending from said guard and
15 movable in relation to said guard, said flap being
oriented in a plane spaced apart from a plane of said
guard.

35. (Amended) A mower head comprising:
a deck comprising at least four sides,
at least one cutting blade rotatably mounted to
said deck on an axis extending through said deck, said
5 deck being disposed above and generally parallel to said
blade;
a guard assembly comprising:
a hinge mounted on said deck, said hinge
extending at an obtuse angle in relation to sides of said
10 deck adjacent opposed ends of said hinge,
a guard pivotally attached to said deck via
said hinge;
a flap extending from said guard and is

15 movable with respect to said guard, said flap being
oriented in a plane spaced apart from a plane of said
guard; and,

20 a linkage assembly for pivoting said guard
in relation to said deck, a first portion of said linkage
assembly being mounted to said guard and a second portion
of said linkage assembly being mounted to said deck.

Please add new claims 38-40 as follows:

38. The mower head of claim 1, wherein said flap is
a resilient, one-piece flap.

39. The mower head of claim 9, wherein said flap is
a resilient, one-piece flap.

40. the mower head of claim 18, wherein said flap is
a resilient, one-piece flap.